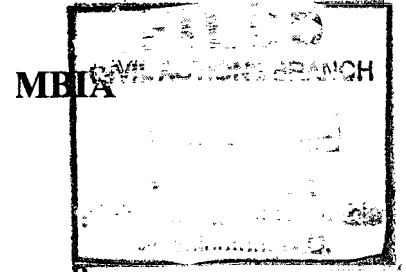


**SUPERIOR COURT OF THE DISTRICT OF
COLUMBIA CIVIL DIVISION**



THE DISTRICT OF COLUMBIA,

Plaintiff,

**v.
THE STEVEN ROSEN CO., et al.,**

Defendants.

• **Civil Action No.: 02-549 8**
• **Judge Boasberg**
: **Calendar 10**

**ORDER GRANTING IN PART AND DENYING IN PART DISTRICT OF
COLUMBIA'S MOTION TO AMEND ORDER FOR RESTITUTION, FOR CIVIL
PENALTIES, FOR ATTORNEY'S FEES AND FOR PERMANENT INJUNCTIVE
RELIEF**

The Court has reviewed District Of Columbia's Motion To Amend Order For Restitution, For Civil Penalties, For Attorney's Fees And For Permanent Injunctive Relief and the Response filed by the corporate Defendants.' Defendant Suter has filed no opposition.

On Jan. 9, 2004, the Court issued an Order that, *inter alia*, awarded restitution damages in the amount of \$1,916,185 to Plaintiff against all Defendants. The Court also permitted Plaintiff to file a motion seeking additional relief, which Plaintiff has now done. The Court will address each area of requested relief in turn.

A. Additional Restitution

The Court invited Plaintiff to submit supporting documentation regarding consumer Wishard, -see Order of Jan. 9 at 7-8, which Plaintiff has now done. Plaintiff correctly notes that it added Wishard on June 12, 2003, and submitted a declaration establishing damages on behalf of that consumer, which the Special Master adopted.

Having now reviewed the information on behalf of that consumer and the Special Master's position, the Court will amend the judgment to add the amount of \$246,743, as recommended by the Special Master.

Plaintiff also seeks additional restitution for consumer Cook, but the Court has already ruled in regard to that consumer, see Order at 7, for whom additional restitution will not be granted.

The total restitution amount will thus be \$2,162,928.

B. Attorney Fees

Plaintiff also seeks attorney fees pursuant to D.C. Code § 28-3909(b), which permits "reasonable attorney's fees" to the Corporation Counsel in a consumer action such as the one brought here. Plaintiff has attached an affidavit from its counsel, who has documented the hours spent on the case. In addition, counsel's affidavit points out that she is seeking a billing rate of \$250, rather than the \$325 the Laffey Matrix provides. The Court credits the affidavit and can also find from its review of counsel's written work that she has done a strong job in representing Plaintiff. The Court, furthermore, finds that the \$290,000 sought is a reasonable amount for the work and the time counsel has committed to the case. As it is, finally, less than 15% of the total amount of restitution damages recovered, the percentage of fees in relation to the total recovery is also reasonable.

The Court, therefore, will award the \$290,000 sought.

¹ The Response essentially cuts and pastes portions of other briefs regarding liability and the Special Master" Report. At almost no point does this pleading address any of the issues raised by Plaintiff in its Motion - namely, additional restitution, attorney fees, civil penalties, and permanent injunctive relief.

C. Civil Penalties

D.C. Code § 28-3909(b) permits "the Corporation Counsel [to] recover a civil penalty of not more than \$1,000 for each violation." Plaintiff now asks for civil penalties of \$364,000. This is based on 52 consumers at \$7,000 apiece because there are seven counts per consumer. This issue is not argued in the memorandum, but mentioned only in the proposed order. Without having reviewed further argument on the issue, the Court cannot see that multiple counts per consumer are appropriate. In any event, it is a considerably fairer result to award \$1000 per consumer for a total of \$52,000 in civil penalties.

The Court will thus award \$52,000 in civil penalties. D.

Permanent Injunctive Relief

Plaintiff also seeks permanent injunctive relief to protect consumers in the future pursuant to § 28-3909(a). The Court agrees that such injunctive relief is warranted under the statute, particularly given the fraud perpetrated upon consumers and the substantial harm they have suffered. Plaintiff has proposed certain types of relief, a large portion of which the Court has adopted below. The particulars of the equitable relief are set forth below.

The Court, therefore, ORDERS that:

1. Plaintiff's Motion is GRANTED IN PART and DENIED IN PART;
2. The Judgment is amended such that the total amount now entered in favor of Plaintiff against Defendants is \$2,504,928, comprising \$2,162,928 in restitution, \$290,000 in attorney fees, and \$52,000 in civil penalties. Upon collection of the monetary judgment from Defendants, Plaintiff shall

dispense the restitution to consumers through a distribution plan to be

submitted by Plaintiff and approved by the Court. Plaintiff will develop such a distribution plan after collection of the judgment and outreach to additional consumers who may have suffered monetary damages as a result of their engagement of Defendants for public insurance adjusting services. Should Plaintiff collect only a portion of the monetary judgment owed by Defendants, Plaintiff shall apportion 90% of the funds collected as restitution for consumers and 10% of the funds collected as attorney fees;

3. Defendants are hereby permanently restrained and enjoined, whenever offering or providing public insurance adjusting services (as defined in D.C. Code § 31-1631.02(5)) to consumers in the District of Columbia, from:

- a. Forging any signature on a check on which a consumer is a payee;
- b. Altering a written contract entered into with a consumer without the consumer's consent;
- c. Forging any signature on a document related to a consumer's insurance claim;
- d. Misappropriating for any other purpose funds issued by an insurance company to compensate a consumer for his or her loss; e. Misrepresenting that a consumer will have no out-of-pocket expenses if the consumer contracts to use the public adjusting services of Defendants;
- f. Representing that a consumer will be provided temporary housing until the consumer's home is repaired, without disclosing the

- maximum amount of time (if any) that such housing will be provided without cost to the consumer;
- g. Misrepresenting the benefits to the consumer of the public adjusting services offered;
 - h. Misrepresenting that a public adjuster will assist a consumer in becoming whole after experiencing property damage from a fire;
 - i. Misrepresenting the competence or reliability of a home improvement contractor;
 - j. Referring a client to a home improvement contractor without disclosing, if true, that a fee will be received from the contractor for the referral;
 - k. When referring consumers to temporary housing services, cleaning services, or other vendors, failing to disclose, if true, that a public adjuster company owned or controlled by Defendants is not a disinterested party in the referrals, and that the referrals generate referral fees for the owners or employees of the public adjuster business;
 - l. Failing to disclose, if true, that there is a substantial difference between the rental payments issued by a consumer's insurance company and the actual rent paid for the consumer's temporary housing;
 - m. Failing to provide, or failing to timely provide, a consumer with a copy of each contract for services that the consumer has executed;
 - n. Referring a consumer to any home improvement, restoration, construction, salvage, or appraisal business in which Defendants

have any direct or indirect interest, without disclosing such interest;

- o. Contracting with a consumer to provide public adjusting services in response to a loss-producing event within twenty-four hours of the loss-producing event;
- p. Failing to allow a consumer a choice of businesses or contractors whenever such business or contractor will be paid out of the funds allocated by the insurance company to compensate the consumer for his or her loss; and
- q. Collecting a fee, or receiving the financial equivalent of a fee, above that disclosed in the contract with the consumer, without disclosing that additional fee or fee equivalent to the consumer in writing.

4. Defendants shall disclose in writing to all customers or prospective customers:

- a. The expected length of time that Defendants will take to negotiate an agreement with the consumer's insurance company, as well as the fact that a consumer can typically reach an agreement with his or her insurance company in less than a month. This disclosure shall be made in Defendants' initial contracts with consumers as well as in any advertising or promotional materials;
- b. That the consumer who contracts for the services of a public insurance adjuster shall have the right to cancel the contract until midnight on the 3rd business day after the day on which the consumer signs the contract. This disclosure will be contained in

- the initial contract with the consumer;
- c. The specific services that Defendants agree to provide to consumers for their fee, including but not limited to whether or not the services include:
- i. obtaining a contractor to effect the repairs;
 - ii. overseeing the contractor engaged by the consumer to effect the repairs in order to ensure that the work is completed in a workmanlike fashion;
 - iii. obtaining temporary housing for the consumer;
 - iv. obtaining cleaning services for goods damaged by the fire;
 - v. obtaining storage services for goods salvageable from the fire;
 - vi. engaging a contractor to remove debris from the premises; and
 - vii. engaging a contractor to secure the premises immediately after the loss-producing event;
- d. What fee, if any, they charge the consumer for each particular service. If such fees are unknown at the time that a consumer enters into a contract with Defendants, Defendants shall immediately disclose such fees in writing, upon Defendants' retention of a specific vendor or contractor; and
- e. The name, address, and phone number for each vendor or business that a consumer chooses through a referral from any or all

Defendants to assist in the restoration of a consumer's home or goods, or to supply temporary housing to the consumer. This disclosure shall be provided in writing to the consumer at the time that the consumer makes the choice of such vendor or business.


5. Any and all insurance companies holding policies for District of Columbia consumers who, prior to the date of this Order, contracted with Defendants to adjust their insurance claims, are hereby authorized to release any remaining funds on any such outstanding claim without naming any Defendant as a payee on the check;
6. For a period of ten years from the date of filing of this Order, Defendants shall provide a copy of this Order to each and every person and to each and every entity that, in connection with the provision of public adjusting services, begins acting, either directly or indirectly, under the direction, supervision, or control of Defendants;
7. Defendant William Suter shall, within twenty (20) days after the date of service of this Order upon him, notify the Office of the Corporation Counsel in writing of his current business address, his current mailing address, and his current employment status, including the name(s) and business address(es) of his employer(s), a description of any self-employment, the type of business(es) in which he is employed, and the nature of his employment duties. To enable the Office of the Corporation Counsel to monitor compliance with the provision of this Order, Defendant William Suter shall inform the Office of the Corporation Counsel of any changes in any such information for a period of ten years following the date of entry of this Order. Each such notification shall be in

writing and shall be mailed to the Office of the Corporation Counsel within twenty days of the change to be reported;

8. For the purposes of this Order, all written notifications from Defendants to the Office of the Corporation Counsel shall be delivered to: Office of the Corporation Counsel, Consumer and Trade Protection, 441 4th Street, NW, Suite 450-N, Washington, DC 20001;
9. Defendants shall retain, keep, and maintain in unaltered form, for a period of five years after the date of their creation, all records that refer or relate to the offering or provision of public adjusting services. For the purposes of this Order, "records" shall include all promotional materials; sales records; correspondence with customers, insurance companies and vendors paid with insurance company funds in connection with the consumer's loss; and all financial records, including but not limited to bank statements, accountants' reports, general ledgers, general journals, cash receipts ledgers, cash disbursements ledgers, and source documents. The provisions of this Paragraph shall remain in effect for a period of ten years from the date of entry of this Order. (Consequently, under this paragraph Defendants shall retain records for a date fifteen years from the entry of this Order should they create any new documents ten years from the date of this Order.);
- and

10. This Court shall retain jurisdiction of this matter for purposes of enforcement, interpretation, and modification of this final judgment.

Mar 2
Date


James E. Boasberg
Judge

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